

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Re:)	Case No. 09-51420-399
)	
ROKAS VARANAVICIUS,)	Chapter 7
)	
Debtor,)	
)	
J AND J HOME BUILDERS, INC.,)	
)	
Plaintiff,)	
)	
vs.)	Adversary No. 10-4166-659
)	
ROKAS VARANAVICIUS,)	
)	
Defendant.)	

MOTION TO DISMISS MOTION TO CONSOLIDATE

COMES NOW Thomas Beck, by attorney, and pursuant to his special entry of appearance moves to dismiss Plaintiff's motion to consolidate for the following reasons:

1. Thomas Beck ("Beck") filed his voluntary Chapter 7 petition in Case No. 10-47840-705 which is pending before the Bankruptcy Court.
2. On September 24, 2010, Plaintiff filed a complaint objecting to Beck's discharge and that matter is pending in Adversary Proceeding No. 10-04418.
3. Beck has not yet been served with process in Adversary No. 10-04418, Beck has not retained counsel in the adversary proceeding and no counsel has entered on behalf of Beck in the adversary proceeding or in this adversary proceeding, until this special entry of appearance. Adversary No. 10-04418 is not an issue and there has been no service of process and no answer yet filed.
4. The certificate of service filed with this motion indicates that Charles W. Riske was

served via the Court's CM/ECF system of this motion, filed in this adversary proceeding, namely, Adversary No. 10-4166.

5. Counsel does not believe he was served through the Court's ECF system as he is not a party to this action and has just now filed a special entry of appearance. Counsel learned of this motion to consolidate through third parties and just recently of the hearing date and time.

6. The motion to consolidate should be denied because Beck has not been served in the other adversary proceeding and the cause is not yet at issue. In the case of Duval v. Bathrick, 31 F.Supp. 510, (D.C. D. Minn. 1940), the court denied a motion to consolidate and stated as follows:

Since the defendant has not as yet answered herein, and the cause is not at issue, the motion of the plaintiff to consolidate for trial purposes this action with another action now pending in the fourth division of this court is prematurely made and cannot be considered by the court at this time. Id. at p. 511.

7. In the event this Court determines that the motion to consolidate should be heard, notwithstanding the fact that Beck has not been served with process, Beck requests that this Court continue the hearing on this matter, set a briefing schedule so that the parties can address the specific merits of the motion and address the allegations that Plaintiff believes the facts for the two current Defendants and potentially two more potential future Defendants are "identical."

WHEREFORE, Thomas Beck prays that the Court enter its order dismissing Plaintiff's motion to consolidate and for such other and further relief as the Court deems just.

/S/ CHARLES W. RISKE
CHARLES W. RISKE, #30698MO #30698
Law Office of Charles W. Riske
231 S. Bemiston, Suite 1220
Clayton, MO 63105
(314) 725-9400 Telephone
(314) 726-2361 Facsimile
riske@ctfpc.com

CERTIFICATE OF SERVICE

A copy of the foregoing was served via ECF this 9th day of December, 2010 to: Michael A. Kasperek, Attorney for Defendant Varanavicius, 225 S. Meramec, Ste. 1220, St. Louis, MO 63105; Deborah Benoit, Kruger and Benoit, L.L.C., 2016 S. Big Bend Blvd., St. Louis, MO 63117; John V. LaBarge, Jr., Chapter 7 Trustee, 15 Sunnen Dr., Ste. 115, St. Louis, MO 63143; and Dennis J. Barton, III, Attorney for Plaintiff, 9109 Watson Rd., St. Louis, MO 63126.

/S/ CHARLES W. RISKE